

EXHIBIT 6

C.A. No. 4:-17-CV-01749;
Alfred Dewayne Brown v. City of Houston, et al.

REPORTER'S RECORD

Volume 39 of 41 Volumes

Trial Court No. 1035159

Court of Appeals No. AP-75,294

THE STATE OF TEXAS : IN THE DISTRICT COURT OF
VS. : HARRIS COUNTY, T E X A S
ALFRED DeWAYNE BROWN : 351ST JUDICIAL DISTRICT

MOTION FOR NEW TRIAL

On the 4th day of January, 2006, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Mark Kent Ellis, Judge presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

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1 P R O C E E D I N G S

2 January 4, 2006

3 THE COURT: We're here on 1035159,
4 the State of Texas versus Alfred DeWayne Brown.

5 For purposes of this hearing I'm
6 going to take judicial notice of all the documents
7 contained in the clerk's file in that cause number.

8 Back on October the 25th of 2005,
9 Mr. Brown was convicted by a jury of the offense
10 of capital murder alleged to have occurred on
11 April the 3rd of 2003. Subsequent to that, at a
12 punishment hearing, the jury set the punishment at
13 the death penalty for Mr. Brown.

14 His case was appealed automatically
15 pursuant to Texas law. The Court appointed two
16 lawyers to represent Mr. Brown, Mr. Hinton on the
17 direct appeal and Mr. Rosen on the Writ of Habeas Corpus.

18 In any event, the reason we're here
19 today is for a hearing on a Motion for New Trial.
20 The motion speaks for itself, but basically
21 alleges that the testifying co-defendant, Dashan
22 Glaspie, told an inmate at the Harris County Jail
23 that he was the actual shooter of the complainant
24 in the case upon which Mr. Brown was convicted.
25 And so the Motion for New Trial was filed.

1 The State -- both sides have been
2 given an opportunity to prepare for the hearing
3 and so that's why we're here today.

4 Defense ready to proceed?

5 MR. HINTON: The Defense is ready,
6 Judge.

7 Two things. One, I have a hearing
8 device in my right ear. I don't think it's going
9 to affect anything, but occasionally if I look at
10 you, that means I didn't hear correctly.

11 THE COURT: I apologize.

12 MR. HINTON: The other thing is that
13 the Court has described accurately the situation
14 as I understand it.

15 We are ready to proceed.

16 As a preliminary note, you and I and
17 Mr. Rizzo have had some in-chamber discussions as
18 to how we might proceed at this hearing. And part
19 of that discussion was that the Court will very
20 well be the one who would ask questions of
21 Mr. Weiner. I have no objection to that.

22 You've let me tell you of any questions I
23 might have and I don't mind proceeding in that manner.

24 THE COURT: All right. And for
25 purposes of the record, to make clear, when the

1 motion was filed, both Mr. Hinton and Mr. Rizzo,
2 on behalf of the State, and the Court had a
3 discussion as to how to proceed.

4 One of the things that was -- the
5 Court was informed of by Mr. Rizzo was that there
6 was an additional episode that happened at the
7 Federal Detention Center whereby another person,
8 whose name I don't know off the top of my head,
9 had made a statement or allegedly made a statement
10 that he was involved in the capital murder and may
11 have been the shooter of the complainant who
12 Mr. Brown has been convicted of killing.

13 So, the procedure that we talked
14 about and what we're going to do today is to
15 certainly address the issues in the Motion for New Trial.

16 Mr. Weiner is here available to
17 testify. There is contained within the Motion for
18 New Trial a -- an affidavit from a Paul Purcell in
19 addition to the statements made by Mr. Hinton in
20 the Motion for New Trial setting forth what their
21 assessment of the events were.

22 And so what I proposed to both sides
23 was to not only address the Motion for New Trial,
24 but address the issue that happened at the Federal
25 Detention Center.

1 For you guys and gals on the Court
2 of Criminal Appeals or whoever else might read
3 this transcript at some future date, the State
4 made -- or gave a description of the events at the
5 Federal Detention Center to Mr. Hinton and myself
6 and gave us sufficient information for Mr. Hinton
7 to respond or to address that if he so chooses to do so.

8 And so I wanted it to be clear for
9 the record that we will not only be addressing the
10 Motion for New Trial, but we will be addressing
11 the additional issue of what happened at the
12 Federal Detention Center.

13 Now, that is the Court's idea -- I
14 want to make sure that's clear for the record --
15 to do both of these in one hearing, basically to
16 make a record of those events, both the Motion for
17 New Trial event and the Federal Detention Center
18 event, for future reference should those matters
19 be raised either on appeal or in a Writ of Habeas
20 Corpus, whether in State or Federal Court.

21 I want the witnesses who we have
22 available to present and to be examined and
23 cross-examined or examined by the Court that they
24 are here while the matters are still fresh and can
25 be given an opportunity to state their peace as to

1 what happened and, therefore, that information available
2 to any future court that may want to look at that.

3 So, it was my desire to get the witnesses
4 here to put the matters on the record under oath
5 and to give the Court the opportunity to examine
6 how the witnesses testify, both under examination
7 and cross-examination, and by questions from the
8 Court so that I could adequately assess their
9 credibility and assess the allegations both in the
10 Motion for New Trial and the incident at the
11 Federal detention facility.

12 So this was the scenario that I
13 explained to both the State and the Defense. I
14 hope I got everything in there, but, Mr. Hinton,
15 does that accurately portray what we talked about.

16 MR. HINTON: It certainly does, Judge. If I
17 might just have a comment at this time.

18 THE COURT: Sure.

19 MR. HINTON: Concerning the Federal
20 detention witness issues, Mr. Rizzo had made
21 available to me the report and I read it
22 concerning their investigation of that incident.
23 And here's how I would like to proceed on that.

24 I do not intend to make that an
25 issue, the Federal detention witness situation, of

1 this Motion for New Trial. In my professional
2 judgment this would not be the appropriate time
3 and the beneficial time for Mr. Brown to do that.

4 I think it more of an issue that
5 Mr. Rosen, who you appointed on the Writ, might
6 look into. But I have seen the information. I
7 feel that Mr. Rizzo has given me everything that
8 he has and they have let me read their report as
9 long as I wanted to and take notes.

10 So what I'm saying is that I think we can
11 cut that issue loose from this Motion for New Trial if
12 it's all right with Mr. Rizzo and the Court.

13 THE COURT: Okay. So we can do the
14 Motion for New Trial and then do that as a
15 separate presentation.

16 MR. RIZZO: Judge, what I had
17 intended to do was the Motion for New Trial by
18 Defense counsel would refer to Mr. Weiner or
19 Weiner, however his name is pronounced, his
20 allegation that he said that Glaspie, who was a
21 witness in our case, a co-defendant, made a statement
22 that he was the officer shooter and not this Defendant.

23 That is the one separate thing and
24 we wanted to address that. I did intend to put on
25 Pat Smith, who is an investigator with the Harris

1 County District Attorney's Office and did work
2 also on the case of the State of Texas versus
3 Alfred Brown where he received the death penalty
4 throughout the -- prior to the trial and also
5 throughout the trial. He did two investigations.
6 And I was going to put him on the stand to
7 describe generally his findings concerning who he
8 talked to, the information that was received to us
9 and also to confirm on the record and under oath
10 that he conveyed this, of course, at least a
11 couple of weeks ago, approximately, to Defense
12 counsel to give them adequate time to prepare if
13 they saw fit as to anything for this hearing.

14 THE COURT: Well, I guess another
15 thing, again, just to make clear. One of the
16 allegations in the Motion for New Trial is
17 basically failure of the trial counsel to
18 ascertain the information alleged in the Motion
19 for New Trial and that that would be something
20 that would cause a different result in the trial.

21 And, you know, however we proceed, I
22 mean, I think the information about the Federal
23 detention situation may go to that issue
24 specifically as well. But as a practical matter,
25 it doesn't matter to me whether we do it all at

1 once or we separate them, it doesn't matter to me
2 at all. But it might be relevant as to that.

3 MR. HINTON: Judge, if I might
4 address that. I would have no objection if the
5 State offers a copy of their investigative report
6 concerning the Defense -- the Detention Center
7 into the record. It would then be in the record.

8 The other thing is I hear what the
9 Court is saying about failure of trial counsel,
10 but I think what my motion actually says is that
11 that evidence could not have been available for
12 the trial. I don't think I was commenting on
13 trial counselors' failure to find it out, just
14 that it wasn't available and couldn't have been
15 found out. At least that's how I was trying to
16 phrase it.

17 THE COURT: I understand. I think I
18 may have overstated in my recitation. I think
19 Mr. Hinton is correct with a better reading of the
20 motion.

21 One more thing I want to also make
22 clear for the record. Obviously, I'm not in any
23 way trying to preempt or stop anyone from having a
24 future hearing on these issues. Obviously that
25 could occur or may occur in the Writ process. I

1 am going to direct the court reporter once this
2 process is complete to make a transcript of the
3 Motion for New Trial available to Mr. Rosen who is
4 doing the Writ -- the State Writ on Mr. Brown's
5 case. And certainly would be available to any
6 future attorneys who represent Mr. Brown, whether
7 it be in State or Federal court.

8 All I'm trying to do is to get out
9 the information that is available at this point in
10 time, to have it aired in court, have it subject
11 to examination. So that if, for instance, some of
12 these witnesses become unavailable at some future
13 date there is a record of what they had to say or
14 on the other hand, if there is a future hearing on
15 these matters, they are down on the record as to
16 what they believe the events are at this point in
17 time so that can be compared and contrasted with
18 whatever they may say at a future date, should
19 that be any different.

20 So it's my desire as with any case
21 but especially in a case of this import, to try as
22 best I can to make all of the facts available
23 to -- for future consideration of any Court of
24 Appeals. And so that's why we're doing this and
25 the way we're doing this.

1 Okay. Mr. Hinton, do you have any
2 additional testimony as to the Motion for New
3 Trial other than the affidavit and information
4 contained in the motion itself.

5 MR. HINTON: Judge, I do not.

6 THE COURT: All right. What does
7 the State say.

8 MR. RIZZO: State would like to call
9 Brian Warner -- or Weiner.

10 THE COURT: All right.

11 All right. Mr. Rizzo.

12 BRIAN MICHAEL WEINER,
13 having been first duly sworn, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. RIZZO:

17 Q. Could you state your name, please?

18 A. Brian Michael Weiner.

19 Q. And you are currently housed in the
20 Harris County Jail; is that right?

21 A. Yes, sir.

22 Q. And what are you -- what are you charged
23 with?

24 A. Murder.

25 Q. You have -- are you due to be sentenced

1 on your case sometime in the near future?

2 A. Yes, sir.

3 Q. And just for purpose of the record,
4 you -- you testified against your co-defendants in
5 this case?

6 A. Yes, sir.

7 Q. How many times did you testify against
8 co-defendants?

9 A. Twice.

10 Q. Twice. And two different co-defendants?

11 A. Yes, sir.

12 Q. And as a result of that, what did they
13 receive?

14 A. Life sentences.

15 Q. Both of them got life?

16 A. Yes, sir.

17 Q. And you are testifying in exchange for a
18 lesser sentence, I assume?

19 A. Yes, sir.

20 Q. And do you know what your sentence is
21 going to be?

22 A. It ranges from five to 40 years.

23 Q. Five to 40?

24 A. Yes, sir.

25 Q. So they put a cap on how much you would

1 get?

2 A. Yes, sir.

3 Q. You were housed in the Harris County Jail
4 in an area where -- at one time where Dashan
5 Glaspie was housed; is that right?

6 A. Yes, sir.

7 Q. You were also housed in an area sometime
8 after that where Alfred Brown was housed, is that
9 correct, or you came in contact with him?

10 A. I came in contact with him.

11 Q. While you're in the Harris County Jail?

12 A. Yes, sir.

13 Q. It was not at the same time that you came
14 in contact with Mr. Glaspie, was it?

15 A. No, sir.

16 Q. Do you see Mr. Brown in the courtroom
17 here today?

18 A. Yes, sir.

19 Q. Could you point to him and describe an
20 article of clothing?

21 A. He's right there sitting in the
22 Defendant's chair wearing orange.

23 MR. RIZZO: Your Honor, may the
24 record reflect he's identified the Defendant.

25 THE COURT: Yes.

1 Q. (By Mr. Rizzo) Now, you -- you
2 had some conversations with -- with
3 Dashan Glaspie over a period of time,
4 did you not?

5 A. Yes, sir.

6 Q. There are allegations that were made in
7 this Motion for New Trial -- you understand what
8 this is about, don't you?

9 A. Yes, sir.

10 Q. Okay. And you have -- who is your
11 attorney, by the way?

12 A. Joe Bailey.

13 Q. You've talked to your attorney about this
14 at length, also, have you not?

15 A. Yes. Yes, sir.

16 Q. And in -- at some point Mr. Bailey, your
17 counsel, after speaking with you and advising you,
18 allowed me to speak with you, too?

19 A. Yes, sir.

20 Q. And also allowed an investigator, Pat
21 Smith, who is sitting behind me to be present,
22 also; is that right?

23 A. Yes, sir.

24 Q. And we questioned you about the issues
25 that are contained in this Motion for New Trial?

1 A. Yes, sir.

2 Q. Let me talk to you specifically about
3 that. There's allegations that you heard Dashan
4 Glaspie claim that he was the person who shot the
5 police officer and not Alfred Brown. You
6 understand that that's an allegation that has been
7 made?

8 A. Yes, sir.

9 Q. And specifically, so I can be clear for
10 the record, the allegation is that Dashan Glaspie
11 admitted he was the shooter and not this
12 Defendant, Alfred Brown?

13 A. Yes, sir.

14 Q. Okay. Did Dashan Glaspie ever tell you
15 that while he was in the jail?

16 A. No.

17 Q. Did he ever make any allegations saying,
18 "I shot him," referring to the police officer?

19 A. No.

20 Q. Did you tell Mr. Purcell that -- you know
21 who Mr. Purcell is, don't you?

22 A. Yes, sir.

23 Q. He's also an inmate in the Harris County
24 Jail?

25 A. Yes, sir.

1 Q. Did you tell Mr. Purcell that Glaspie had
2 told you that he shot the police officer?

3 A. No, sir.

4 Q. You never told him?

5 A. No, sir.

6 Q. I also -- at some point you talked to the
7 Defense attorney in this case; is that right?

8 A. Yes, sir.

9 Q. And you know who I'm talking about?

10 A. Yes, sir, Mr. Hinton.

11 Q. Could you tell us about that?

12 A. Well, he came in, he introduced himself.
13 He said he was Mr. Hinton and he's here on behalf
14 of Mr. Brown or -- I think that's his name,
15 Mr. Brown, right?

16 And he had said the reason why he
17 was here, he had pulled out Mr. Purcell's letter
18 and put it up to the thing and showed me what
19 Purcell had wrote to him. And he showed it to me
20 and I read it off. And then, you know, he said,
21 "Well, you know, is this true and this and that
22 and can you sign an affidavit?" I said, "I'm not
23 signing any affidavit, you know. I've got to
24 talk" -- first of all, I told him that Joe Bailey
25 is my lawyer. I didn't even know why he was there

1 without talking to Joe.

2 He said that he was in a rush and he
3 asked me these things and I said, "He never said
4 that to me. He cuts my hair, but he never said it
5 to me."

6 Q. You're saying -- you're saying -- you're
7 claiming now that you never said -- you never told
8 Defense counsel, Mr. Hinton, that Glaspie admitted
9 to being the shooter?

10 A. I never said that.

11 Q. At the time that you made -- that you
12 were referring to some of the -- you did talk to
13 some people about Glaspie, did you not, in the
14 jail?

15 A. Yeah. It was -- he was in the newspaper.
16 I mean, it was obvious, you know. You know, word
17 gets around. Just like my case, his case was in
18 the newspaper, too.

19 Q. And the person who was -- you had a
20 fairly newsworthy case, did you not?

21 A. Yes, sir.

22 Q. And the person who was killed in your
23 case was who?

24 A. A fireman.

25 Q. A fireman. And so you are charged with

1 the murder of a fireman during an arson case; is
2 that right?

3 A. Yes, sir.

4 Q. I'm not asking you about your case, just
5 the allegations.

6 Did you talk to Mr. Brown, this
7 Defendant, at some point after you had talked to
8 Mr. Hinton or was it before.

9 A. It was before.

10 Q. Okay. When you talked to this Defendant,
11 Mr. Brown, what did he tell you?

12 A. Well, it was after I talked to
13 Mr. Purcell. He had said that Brown was right
14 there --

15 Q. Who said?

16 A. Mr. Purcell. I had talked to Paul and he
17 had asked me about Glaspie. He had said, "You
18 know, do you know anything about Glaspie," because
19 he knew that Glaspie cut my hair.

20 Q. Who knew that?

21 A. Purcell.

22 Q. Okay?

23 A. Mr. Purcell. Because he was in 7-B-1.
24 At one time he was my next-door neighbor.

25 Q. Okay?

1 A. You know, in the next-door cell to me.
2 So he had asked me, you know, "Did Glaspie ever
3 tell you anything, this and that" I said, "He told
4 me that he got a good deal and that's about it."

5 He said, "Can you find out if, you
6 know -- can you talk to him anymore." I said, "I
7 really don't talk to him anymore." And he said,
8 "Well, his co-defendant is right there," and I
9 went up and said, "What's up?"

10 Q. To who?

11 A. Mr. Brown.

12 Q. The Defendant?

13 A. Yes. I said, "What's up?" And he said,
14 "What's up?" He said, "Do you know anything?"
15 And I said, "Not really." He said, "Man, I'll do
16 anything. I'll pay you. I'll do whatever you
17 need".

18 Q. He said he would pay you for what?

19 A. To say that Glaspie said he shot the
20 police officer.

21 Q. So this Defendant offered you money if
22 you would testify falsely?

23 A. Yes.

24 MR. RIZZO: Pass the witness, Your
25 Honor.

1 THE COURT: Mr. Weiner, I'm going to
2 ask you some questions right now.

3 EXAMINATION

4 BY THE COURT:

5 Q. When you met with Mr. Hinton, was that in
6 a regular interview?

7 A. Yes, sir.

8 Q. In a room, I guess, you call it?

9 A. Attorney booth.

10 Q. Which jail were you at?

11 A. 701.

12 Q. And my recollection is that's a
13 plexiglass window and you're on one side and he's
14 on the other, correct?

15 A. Yes, sir.

16 Q. When Mr. Hinton talked to you, he did
17 tell you expressly he was representing Mr. Brown,
18 correct?

19 A. Yes, sir.

20 Q. And, although -- and I understand your
21 confusion at that point. You had never talked to
22 him before; is that correct?

23 A. Yeah. I didn't even know who he was at
24 this time. I was really confused because when he
25 walked right in, it wasn't my lawyer, Mr. Bailey.

1 Q. Okay?

2 A. And the first thing I said, "Have you
3 talked to my lawyer" because my lawyer told me
4 don't say nothing to anybody --

5 Q. Okay. You need to speak loud enough for
6 her to hear you?

7 A. I'm sorry. I asked him -- the first
8 thing I said, "Do you have permission from Joe to
9 come see me?" He said, "I know your lawyer. I'm
10 in a rush".

11 Q. Now, did Mr. Hinton -- did anything
12 Mr. Hinton say to you, was any of it unclear?
13 Meaning did you understand what he was talking to
14 you about?

15 I understand that you were concerned
16 that he not talk to Joe, but did you understand
17 why he was there and why he was talking to you.

18 A. Well, at first when he pulled out
19 Mr. Purcell's letter, I didn't understand what
20 was going on. I didn't know that Mr. Purcell had
21 wrote a letter to Mr. Hinton on me, you know, so I
22 was like -- and he read it up there and I sat
23 there and read it, you know, kind of like mumbled
24 it out, you know, and he said, "Are you ready to
25 sign the affidavit?" I said, "I'm not signing

1 anything".

2 Q. Let's back up. The letter from
3 Mr. Purcell, I assume it was signed by
4 Mr. Purcell; is that correct?

5 A. Yes, sir.

6 Q. And how long -- how had you met
7 Mr. Purcell?

8 A. Well, we had been locked up next to each
9 other in the seventh floor in the 7-B-1 pod.

10 Q. For how long a period of time?

11 A. Three or four months next to each other.

12 Q. During that period of time while y'all
13 were next-door neighbors, did you ever discuss
14 your -- this particular case with him?

15 A. Never.

16 Q. So after y'all were no longer next-door
17 neighbors is when y'all ultimately had a
18 conversation about Dashan Glaspie; is that
19 correct?

20 A. Yes, sir.

21 Q. Where did that take place?

22 A. When I go to visitation -- when I was
23 coming back from visitation, there's a double door
24 lockdown and they open a door and there's four
25 cells in there. That's where, like, they put the

1 Death Row inmates and the gang related inmates.
2 Sometimes they let me stop by and I'd say, "Hey,
3 what's up?"

4 And I went over there and he said,
5 "Hey, Weiner, come talk to me" so I went over
6 there and talked to him.

7 Q. Now, with Purcell -- in that setup, is he
8 behind bars, behind plexiglass?

9 A. He's behind a door.

10 Q. Behind a door. All right?

11 So y'all visited through the door.

12 A. Well, you know, they have a pan hole
13 where they put the meals, the pan hole was opened.

14 Q. So when -- now, why was Mr. Purcell in
15 jail, do you know?

16 A. Something about some weed getting caught
17 in the County Jail. I'm not sure about it.

18 Q. So some sort of drug case?

19 A. Yes. And he's back on a Habeas Corpus.

20 Q. Okay. So when you talked to Mr. Purcell
21 at that point in time -- I know it's hard to
22 remember when all this stuff took place, but that
23 was before you talked to Mr. Hinton, correct?

24 A. Yes, sir.

25 Q. All right. And it was after y'all had

1 been next-door neighbors?

2 A. Yes, sir.

3 Q. Okay. So somewhere between then is when
4 the discussion happened, correct?

5 A. Yes, sir.

6 Q. Now, when you talked to Mr. Purcell, did
7 you bring up Glaspie or did he bring up Glaspie?

8 A. He brought up Glaspie.

9 Q. And do you remember specifically what he
10 asked you or what he said as best you can?

11 A. When I bent down, he said, "Hey, what's
12 up," you know. I had sent him a magazine. I had
13 gotten to look at and he said, "Thanks for the
14 magazine." He said, "Do you know Glaspie?" Well,
15 they call him Dead End. "Do you know Dead End" I
16 said, "Yeah" and he said, "He cuts your hair" and
17 I said, "Yeah".

18 Q. Okay?

19 A. And he said, "Well, that's his fall
20 partner right there" and then he started asking me
21 questions. He said that the fall partner
22 didn't -- didn't shoot the guy.

23 Q. Okay. Now, for edification of Judges,
24 what is "fall" -- you said fall --

25 A. Partner.

1 Q. -- partner. What does that mean to you?

2 A. Like a guy -- say you commit a crime and
3 the guy with you is your fall partner. The guy
4 that did it with you.

5 Q. All right. And you know in court a lot
6 of times we call those people co-defendants or
7 parties. You've heard that language before,
8 right?

9 A. Yes, sir.

10 Q. But that's the same thing, right?

11 A. Co-defendant, yes.

12 Q. Okay. So at that point are you talking
13 to Mr. Brown at all or are you just talking to --

14 A. I'm still talking to Mr. Purcell.

15 Q. Okay. And so what does he say about
16 Glaspie -- I mean, you establish that you know
17 him --

18 A. He's saying that Mr. Brown was housed
19 next to him, that Mr. Brown had completely said he
20 was innocent. His story had never changed, you
21 know, and that he asked me did Glaspie ever tell
22 me anything, you know, did he pull the trigger or
23 anything. And I said, "You know, Dead End, he's
24 not fixing to tell me that after I testified
25 against my fall -- my co-defendants".

1 Q. Now, did Mr. Glaspie know that you
2 testified?

3 A. Yes, sir, it was in the paper.

4 Q. And, of course, y'all were sort of in the
5 same situation because he testified against the
6 other two defendants in his case?

7 A. Yes.

8 Q. Had y'all talked about that, I mean, not
9 what you said, but just about having that in
10 common?

11 A. We had kind of said to each other when he
12 was cutting my hair that we had both been in the
13 wrong place at the wrong time with the wrong
14 people.

15 Q. Okay?

16 A. And that's about as far as it went.

17 Q. All right. So the answer to the question
18 of Mr. Purcell did he ever say he was the
19 triggerman, your answer was why would he tell me
20 that?

21 A. Yes.

22 Q. Did you ever answer it yes or no?

23 A. I told him no.

24 Q. Okay. Did he ask you any other questions
25 about Glaspie at that point?

1 A. Not really, just to keep my ears open,
2 you know.

3 Q. Did he say why? I mean, anything
4 specific or just --

5 A. Well, he thought Mr. Brown was innocent.

6 Q. Now, at that point did you have any
7 discussion with Mr. Brown?

8 A. Yes. I stepped over to his cell and said
9 "Hi," or "What's up".

10 Q. Okay. How far apart were the cells of
11 Mr. Purcell and Mr. Brown?

12 A. Okay. There's four cells and there's A,
13 B, C and D.

14 Q. Okay?

15 A. Mr. Purcell is in D and Mr. Brown is in
16 B.

17 Q. All right. So there's one --

18 A. Cell in between.

19 Q. All right. Was his tray whatever -- what
20 do you call it?

21 A. The pan hole.

22 Q. Was the pan hole open on Mr. Brown's?

23 A. Yes, sir.

24 Q. All right. Now, I know you don't have
25 any way of knowing if he heard what you said, but

1 were you talking in a loud voice?

2 A. You can hear in there. It echoes -- you
3 know, the door is closed. You can hear.

4 Q. Okay. And the whole space itself is not
5 very big, correct?

6 A. I'd say it's about as big as the jury
7 box.

8 Q. Okay. And so there's a hallway -- not
9 a -- but there's a walk space and then the four
10 cells?

11 A. Yes, sir.

12 Q. Okay. When you stepped over to talk to
13 Mr. Brown, who starts that conversation, you or
14 him?

15 A. I did.

16 Q. And what did you say?

17 A. "What's up".

18 Q. What did he say?

19 A. He said, "Hey".

20 Q. All right. What happened next?

21 A. He said, "Do you know I'm innocent? I
22 didn't do this, you know. Do you know if Dead End
23 pulled the trigger? Did he ever tell you that?"
24 And I said no. And I said I wouldn't want to get
25 in anybody else's case because I've got to worry

1 about my case. Myself comes in front of
2 everybody. And I told him -- I said, "I'm not
3 fixing to get in anybody else's case right now
4 because I got to worry about myself."

5 Q. Okay. And then what happened next?

6 A. I left.

7 Q. All right?

8 A. Well, he said -- you know, he offered me
9 a little bit of money. He said, "You know, you
10 need anything or anything, I can help you out." I
11 said, "No, I'm all right. I got my own stuff".

12 Q. After that time, did you ever have
13 another discussion with either Mr. Purcell or
14 Mr. Brown?

15 A. After that -- after that Mr. Brown was
16 gone like two days later. Because I had seen
17 Mr. Purcell -- two or three days later I had seen
18 Mr. Purcell and he had never said another word to
19 me. And then all of a sudden Mr. Hinton showed
20 up.

21 Q. Okay. So the next time you saw
22 Mr. Purcell was where?

23 A. Was -- they had moved me out of 7-B-1 to
24 7-N-1, across the hall from Purcell. When we had
25 gone to the law library, I had seen him at law

1 library.

2 Q. Okay. Did y'all talk at that time?

3 A. He never told me about any letter.

4 Q. But did y'all talk?

5 A. Yes, sir.

6 Q. All right. Did y'all say anything else
7 about Mr. Glaspie at that point or Mr. Brown?

8 A. Not a word. I didn't even know.

9 Q. Okay. Did you have any further
10 discussion with Mr. Purcell after the law library?

11 A. No, sir.

12 Q. So that's the last conversation you had
13 with Mr. Purcell?

14 A. Yes, sir.

15 Q. You never spoke to Mr. Brown after that
16 one time there in the four-cell situation?

17 A. Never again. One time only, about a
18 minute.

19 Q. Now, as far as Glaspie was concerned you
20 said he cut your hair. How did that work?

21 A. Well, you know, the pan hole, he'd take a
22 little razor blade and stick it on a hairbrush and
23 cut my hair through the pan hole. I'd sit on a
24 little box and he'd cut my hair.

25 Q. All right. Were y'all ever housed

1 together in the same pod?

2 A. 7-B-1, sir.

3 Q. For how long a period of time?

4 A. About 18 months.

5 Q. Okay. I imagine you saw him reasonably
6 frequently?

7 A. Yes, sir.

8 Q. Now, was that a lockdown or were y'all
9 able to --

10 A. 23-hour lockdown where you come out two
11 times for 30 minutes a day.

12 Q. Would that be alone?

13 A. Alone.

14 Q. So your conversations with Mr. Glaspie,
15 how did those take place?

16 A. Well, sometimes -- T.V. is right in front
17 of Mr. Glaspie's house. In my house I can't see
18 the T.V.

19 Q. Okay?

20 A. So every now and then like when the
21 Rockets would play or something, I would go in
22 there and Dead End or Glaspie and I would talk
23 about the Rockets. And, you know, he liked
24 basketball and I liked basketball.

25 Q. Okay. Now, I'm confused. How are you

1 able to go where he is?

2 A. Okay. In a tank -- it's called a tank or
3 a pod. There's 12 bottom cells with sliding doors
4 and there's 12 on the top.

5 Q. All right. And then the guard --
6 it's like a triangle?

7 A. Yeah, and then the guards are in the pod.

8 Q. Okay?

9 A. Well, everybody gets 30 minutes out in
10 the morning. There's first, second and third
11 shift. Okay? And say you get your 30 minutes on
12 the first shift, you're going to get 30 minutes on
13 the third shift. It works out that way sometimes.

14 Q. Okay. So occasionally you'd be out at
15 the same time as Mr. Glaspie?

16 A. No, he'd be in his cell and I would walk
17 up by his cell where the T.V. was and he'd be
18 standing by the door and I'd say, "Hey, what's
19 up".

20 Q. And you'd talk through the pan hole,
21 again?

22 A. We talked through the glass on the side
23 of the door.

24 Q. Okay. All right. At any point during
25 your relationship with Mr. Glaspie or talking to

1 Mr. Glaspie, did you ever talk about the specific
2 facts of his case, what he did or didn't do in the
3 capital murder case?

4 A. No, we never -- we never specifically.
5 Really it was pretty much always about me, because
6 my case was always in the newspaper. It was
7 always in the newspaper. And he said, "You know,
8 my fall partner" -- well, my co-defendant, they
9 had put him in the cell block with us and he was
10 talking to Mr. Glaspie about my case. And
11 Mr. Glaspie was like, "Man, this dude, you know,
12 you kind of like me in the wrong place at the
13 wrong time," but we never got in specifics about
14 the case because I didn't want to ask him
15 personally. You know, he's a big dude. I wanted
16 to stay away from him.

17 Q. All right. So bottom line, did y'all
18 ever talk specifically about what happened in
19 Mr. Glaspie's case?

20 A. No. Never specifically, no.

21 Q. Did he ever make any statement to you in
22 any way, shape or form indicating that he shot
23 anybody or killed anybody?

24 A. No.

25 Q. I guess one more thing: Of course, you

1 realize in your situation your testimony today has
2 no affect on what happens in your case?

3 A. Absolutely.

4 Q. Just to make sure, nobody has promised
5 you any benefit for this; is that correct?

6 A. No.

7 Q. You're not under any impression that this
8 is going to help you in the resolution of your
9 case?

10 A. No.

11 THE COURT: Okay. Anymore
12 questions.

13 MR. RIZZO: Just one, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. RIZZO:

16 Q. I didn't -- for purposes of the record,
17 could you state your prior convictions and arrests
18 just for purposes of the record?

19 A. Okay. I don't know them all
20 specifically, but I've been arrested for driving
21 with suspended license, I think about three times.
22 I've been arrested for theft twice out of Fort
23 Bend and Harris County and I've been arrested for
24 murder. This is my charge right now.

25 Q. And how many of those were convictions?

1 A. One of them I was on felony probation so
2 I guess that's a conviction. And the one out of
3 Fort Bend was a deferred.

4 Q. For what offenses?

5 A. Theft.

6 Q. Two theft, felony thefts, and you had a
7 probation and a deferred?

8 A. Yes, sir.

9 FURTHER EXAMINATION

10 BY THE COURT:

11 Q. Are you still on probation or deferred?

12 A. I don't have any conviction. I'm still
13 on probation.

14 Q. So they haven't been resolved yet?

15 A. Yes, sir.

16 Q. Is the deferred over with?

17 A. No, sir.

18 Q. So the probation and deferred are still
19 pending?

20 A. Yeah, the one in Fort Bend -- yeah,
21 they're both pending, yes, sir.

22 Q. Again, bottom line, has anyone promised
23 you anything or in any way, shape or form told you
24 what to say today?

25 A. No, sir.

1 MR. RIZZO: One other question,
2 Judge, if I may.

3 THE COURT: Sure.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. RIZZO:

6 Q. When I met with you along with the
7 investigator, Pat Smith, your attorney was present
8 the whole time; is that right?

9 A. It was -- can I say something? It was my
10 idea when my lawyer came to me and told me what
11 happened and showed me. It was my idea for him to
12 seek you out to come and tell you this wasn't
13 true.

14 Q. Okay. And my point, though, is that your
15 attorney was present when I talked to you; is that
16 right?

17 A. The whole time, sir.

18 Q. And that is Joe Bailey?

19 A. Yes, sir.

20 Q. He's a licensed attorney in the State of
21 Texas and practices in Houston and Harris County?

22 A. Yes, sir.

23 Q. When I spoke with you, did I ever try and
24 intimidate you or threaten you in any way to get
25 you to say one thing or another?

1 A. Never.

2 Q. Did I at some point tell you I don't care
3 what the truth is, I just need to know what the
4 truth is?

5 A. You told me that you wanted to know who
6 the guilty person was. You wanted to know if you
7 had an innocent man behind bars. You wanted to
8 know the truth. That's what you told me.

9 Q. And I didn't try to get you to say one
10 thing or the other, did I?

11 A. No. You just said tell the truth, which
12 I told the truth.

13 Q. This is in front of your attorney, also?

14 A. Yes, sir.

15 MR. RIZZO: That's all I have,
16 Judge.

17 THE COURT: One more thing. Again,
18 just to -- I know we keep asking, just trying to
19 make everything clear and think of everything we
20 can think of.

21 FURTHER EXAMINATION

22 BY THE COURT:

23 Q. When Mr. Hinton visited with you, he
24 certainly made no threats against you or any
25 promises; is that correct?

1 A. No.

2 Q. And understanding the confusion of the
3 situation, did Mr. Hinton ever ask you any
4 questions about your case, your specific case?

5 A. I don't -- I don't recall him asking any
6 questions.

7 Q. So it was all about Mr. Brown's
8 situation?

9 A. It was all about Mr. Brown's situation.

10 Q. All right. And as far as any affidavit,
11 did you -- did you do that or not do that?

12 A. No way. No.

13 Q. Okay. As far as with Mr. Purcell, as far
14 as you know, has there ever been any issues or
15 problems between the two of y'all?

16 A. No. Actually, I think we were pretty
17 good friends.

18 Q. So do you have any reason to think or
19 any -- know of any possible reason why Mr. Purcell
20 would say something about you that was not true,
21 any -- whatever it may be, any issues, any fight,
22 anything that y'all may have -- that may have
23 happened between the two of y'all?

24 A. No. Actually, you know, he's never
25 really lied. I mean, when Mr. Bailey came and

1 showed me the affidavit when I was in court, I was
2 pretty shocked.

3 Q. Right?

4 A. When Mr. Hinton came up, I was like, you
5 know, wow, you know, like, I was pretty much --

6 Q. Right?

7 A. It came -- it came out of the woodworks.
8 I was surprised.

9 Q. But since then, I mean, you haven't had
10 any contact with Mr. Purcell after you saw the
11 affidavit, right?

12 A. I was still -- I went to the law library
13 twice more, but we didn't ever talk about it. He
14 didn't know that I had seen the affidavit because
15 Mr. Bailey had told me to keep my mouth shut and
16 not say another word to him.

17 Q. Good advice.

18 THE COURT: All right. Any other
19 questions, Mr. Rizzo.

20 MR. RIZZO: No, Your Honor.

21 THE COURT: Mr. Hinton, do you have
22 anything else you'd like to ask.

23 MR. HINTON: Judge, I have no
24 questions of Mr. Weiner.

25 THE COURT: You may step down.

1 State call your next witness.

2 MR. RIZZO: State calls Dashan
3 Glaspie.

4 Judge, may I approach the bench for
5 a second.

6 THE COURT: Sure.

7 (Off-the-record discussion; court
8 reporter not requested.)

9 (Witness sworn.)

10 THE COURT: Mr. Hinton, do you have
11 any questions at this time? Do you have any
12 questions at this time of this witness.

13 MR. HINTON: No, I don't, Judge.

14 THE COURT: All right.

15 Mr. Rizzo.

16 DASHAN GLASPIE,
17 having been first duly sworn, testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. RIZZO:

21 Q. Could you state your name, please?

22 A. Dashan Glaspie.

23 Q. And, Mr. Glaspie, you testified in the
24 case of the State of Texas versus Alfred Brown,
25 did you not?

1 A. Yes.

2 Q. He was your co-defendant in a capital
3 murder?

4 A. Yes.

5 Q. Do you see him in the courtroom here
6 today?

7 A. Yes.

8 Q. Could you point to him and describe an
9 article of clothing?

10 A. Orange jumpsuit.

11 Q. Okay.

12 MR. RIZZO: Your Honor, may the
13 record reflect he's identified the Defendant?

14 THE COURT: Yes.

15 Q. (By Mr. Rizzo) And you are also
16 aware that the Defendant in this case --
17 and I'm talking about Mr. Brown --
18 received the death sentence?

19 A. Yes.

20 Q. You got a deal in exchange for your
21 testimony, did you not?

22 A. Yes.

23 Q. And what was -- for purposes of the
24 record, what was the deal?

25 A. Thirty years aggravated robbery.

1 Q. And we -- we did not proceed on the
2 prosecution of the capital murder after your
3 testimony; is that correct?

4 A. Yes.

5 Q. Okay. You got -- do you know a person by
6 the name of Weiner or Weiner?

7 A. Yes.

8 Q. And who is he? What's his first name?
9 Do you know?

10 A. Brian.

11 Q. Brian. And how do you know him?

12 A. He was in the same tank I was in.

13 Q. Were you friendly with him, unfriendly
14 with him? What was your relationship with him?

15 A. I didn't really associate with him.

16 Q. Did you cut his hair one day?

17 A. Yes.

18 Q. And how long were you in the same tank
19 with him?

20 A. Well, I was here a year. He came
21 after -- a year after I was here.

22 Q. Would that be a year or so?

23 A. Yes, about a year or so. Well, almost
24 two years because he came after I was back there a
25 year already.

1 Q. Did you ever tell Mr. Weiner or Weiner
2 that you, Dashan Glaspie, were the shooter of the
3 police officer and not the Defendant in this case,
4 Alfred Brown, as how you testified in the trial of
5 Alfred Brown?

6 A. No, I never told him that.

7 Q. Have you ever talked about your case in
8 the cell, in the jail?

9 A. No.

10 Q. And you've been in custody since April of
11 2003; is that correct?

12 A. Yes.

13 Q. Have you -- have you talked to any
14 other -- other inmates about your case?

15 A. No.

16 Q. Do you also -- you also know a person by
17 the name of Deontra Smith?

18 A. Yes.

19 Q. And who is he?

20 A. He's some -- a dude that stayed in The
21 VA.

22 Q. He's a friend of yours from The VA?

23 A. Yes.

24 Q. Did he -- you've already testified that
25 you were -- you were involved with some people who

1 were involved in some aggravated robberies, too;
2 is that right?

3 A. Yes.

4 Q. You testified to that in the Alfred Brown
5 case?

6 A. Yes.

7 Q. And actually the Joubert case, too, I
8 believe, did you not?

9 A. Yes.

10 Q. Was Deontra Smith ever a member of a
11 group -- that group that was involved in
12 aggravated robberies?

13 A. No.

14 Q. Did he ever do any robberies with you at
15 all?

16 A. No.

17 Q. Was he present on April 3rd of 2003 in
18 the 5900 block of South Loop East at the ACE check
19 cashing store where Alfredia Jones and Officer
20 Charles Clark were killed?

21 A. No.

22 Q. Was he in any way involved in that case
23 at all?

24 A. No.

25 Q. Did you ever attempt or did anybody of

1 the co-defendants, that would be you, Joubert or
2 Alfred Brown, attempt to bring in Deontra Smith
3 into that conspiracy?

4 A. No.

5 Q. Did any of you -- did you ever try and
6 bring him into any other robberies that you may
7 have been involved in?

8 A. No.

9 Q. When he was -- and I'm talking about
10 Deontra Smith. When he was in custody in Dallas,
11 you did give some money to his mother to help him
12 get out on a bond, did you not?

13 A. Yes.

14 Q. So he was a friend of yours, I guess?

15 A. Yes.

16 Q. Could you help us understand, you know,
17 what kind of friend he was? Was he someone you
18 were doing crimes with, too, or is he somebody
19 that you were hanging with and partying with, what
20 kind of --

21 A. Someone I hung with around the
22 apartments.

23 Q. But you never did any robberies with him?

24 A. No.

25 Q. Now, one other thing I was going to ask

1 you about Mr. Weiner. He had told us -- I'm
2 talking about Pat Smith. You know who Pat Smith
3 is, don't you?

4 A. Yes.

5 Q. You told Pat Smith and I when we
6 interviewed you shortly before Christmastime that
7 Weiner had been asking different people in the pod
8 about different things; is that correct?

9 A. Yes.

10 Q. Could you tell us about that?

11 A. Well, basically he was -- he don't want
12 to go to TDC. He was always trying to get less
13 time by asking people about their cases. So
14 everybody in the tank basically knew what he was
15 trying to do so nobody would talk to him on that
16 level about none of their cases or nothing like
17 that. Whenever they talk to him about it, it
18 wouldn't be about that.

19 Q. So he was trying to get information on
20 other people's cases?

21 A. Yes.

22 Q. Did you and other people in the pod steer
23 clear of him in saying anything to him about
24 cases?

25 A. No. I don't know. I mean, I don't know

1 the dudes that he was next door to upstairs. It
2 was upstairs and downstairs. And I'm downstairs.
3 But the only time I talked to him, he wanted me to
4 cut his hair before.

5 And my cell right in front of the
6 T.V., so he always -- any time he come out, he
7 always right there in front of the T.V.

8 Q. And you -- you never talked about your
9 case to him at all?

10 A. No.

11 Q. Did you think he was somebody that was
12 trying to help himself when you were in the jail?

13 A. I don't -- what you mean?

14 Q. You said that he was trying to --
15 everybody in the pod was leery of him. They
16 didn't want to say anything because they thought
17 he was trying to work something?

18 A. Yes.

19 Q. Did you talk about that with other people
20 in the pod that Weiner or Weiner was --

21 A. Everybody did, I mean.

22 Q. What do you mean?

23 A. I mean, he -- his fall partner, his
24 co-defendant, signed a statement, got in our tank
25 and everybody was reading it or whatever and he

1 was --

2 Q. Stop for a second. What does that mean?
3 Tell me what that -- somebody got his statements,
4 are you talking about Weiner's?

5 A. Yes, his statement that he made on his
6 case.

7 Q. Yes?

8 A. And some people read it inside the tank
9 and he was mad or whatever.

10 Q. So he was not the most popular guy in the
11 tank?

12 A. What you mean popular?

13 Q. The -- did other people like him?

14 A. No, don't nobody like him.

15 MR. RIZZO: I'll pass the witness,
16 Your Honor.

17 EXAMINATION

18 BY THE COURT:

19 Q. Mr. Glaspie, I just need to ask you a
20 couple of questions.

21 Now, you've been sentenced on your
22 case. Your case is done, correct.

23 A. Yes.

24 Q. Are you under the impression that this
25 testimony today will be of any benefit to you?

1 A. No.

2 Q. Are you testifying here because of any
3 promise or inducement or any other reason other
4 than to testify under oath?

5 A. No.

6 Q. You're -- just ballpark -- and I know it
7 may be hard to figure out. How many times do you
8 think you talked to Mr. Weiner?

9 A. Several times. I mean, I can't really
10 give a certain amount of times.

11 Q. Did you ever talk to him about any
12 specific facts of your case?

13 A. No, never.

14 Q. Anything?

15 A. Anything, never.

16 Q. Did you ever talk to him about Mr. Brown
17 or Mr. Joubert?

18 A. Never.

19 Q. Did he ever talk to you about his case?

20 A. I mean, yeah, he always try to -- yes.
21 Yeah, he have. I mean, never just really gave me
22 details about his case, but always saying that he
23 didn't do nothing. It was always his fall partner
24 Jade.

25 Q. Now, you were aware, I guess, from your

1 conversations that he was testifying against his
2 co-defendants?

3 A. Yes.

4 Q. And that was -- sort of put y'all in a
5 similar situation?

6 A. Yeah.

7 Q. In terms of he made a deal, he testified,
8 you made a deal, you testified?

9 A. Yes.

10 Q. Did that in any way make you trust him
11 any more or trust him any less?

12 A. No.

13 Q. Which one? Trust him more or less?

14 A. I didn't trust him at all. I never did
15 trust him at all.

16 Q. Did you ever tell him or any other
17 inmate at the County that you shot the
18 officer?

19 A. No.

20 Q. Or Ms. Jones, for that matter?

21 A. No.

22 THE COURT: All right. Anymore
23 questions.

24 MR. RIZZO: No, Your Honor.

25 MR. HINTON: No, Your Honor.

1 THE COURT: You may step down, sir.

2 Okay. Anything else on the Motion
3 for New Trial from the State.

4 MR. RIZZO: Yes, Your Honor. State
5 calls Pat Smith.

6 THE COURT: Okay.

7 (Witness sworn.)

8 THE COURT: Mr. Rizzo.

9 PATRICK SMITH,
10 having been first duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. RIZZO:

14 Q. State your name, please?

15 A. Patrick Smith.

16 Q. And how are you employed?

17 A. As an investigator with the District
18 Attorney's Office.

19 Q. How long have you been an investigator
20 with the D.A.'s Office?

21 A. Twenty-two years.

22 Q. And how long have you been a peace
23 officer?

24 A. A little over 30.

25 Q. How many different agencies were you with

1 before you went with the Harris County D.A.'s
2 Office?

3 A. Three.

4 Q. Let me ask if you were involved in the
5 investigation prior to trial as well as the trial
6 preparation of a case involving the State of Texas
7 versus Dashan Glaspie, Alfred Brown and Elijah
8 Joubert?

9 A. Yes, sir.

10 Q. And you also were assigned -- involved in
11 an investigation of a Motion for New Trial and any
12 evidence or any information that was received by
13 the D.A.'s Office concerning the State of Texas
14 versus Alfred Brown in a case where he received
15 the death penalty?

16 A. Yes, sir.

17 Q. Let me -- I'm just going to ask you if
18 you can go through generally and not go through
19 every specific fact of what you did. But, again,
20 generally the things that you did and why in
21 reference to the post-conviction investigation of
22 information that came to the District Attorney's
23 Office?

24 A. Yes, sir, there was a lot of them. We
25 received -- or I got information from you in late

1 November regarding a Motion for New Trial had been
2 filed on behalf of Alfred Brown.

3 We had -- I read the Motion for New
4 Trial and saw that there was a statement attached
5 to it from Paul Purcell and there was also in the
6 body of the motion, there was some information
7 regarding a Brian Weiner and the allegations were
8 that Brian Weiner had told Purcell that Dashan
9 Glaspie had, in fact, shot Officer Charles Clark.

10 Q. Now, that would be inconsistent with the
11 facts that were presented in either of the trials
12 where they received the death penalty, that would
13 be Alfred Brown and Joubert; is that correct?

14 A. That's correct.

15 Q. At that point did I instruct you as to
16 how I would like the investigation proceeding? In
17 other words, did I tell you that I wanted it to
18 turn out one way or how did I talk to you about
19 how I wanted it dealt with?

20 A. Well, you just wanted -- told me that you
21 wanted to discuss or wanted me to look into this
22 matter and see if these allegations were, in fact,
23 true or not.

24 Q. Okay. What did you do then next
25 generally?

1 A. Well, I did a little research on the
2 computer, located where these two inmates from the
3 Harris County Jail were housed, where Mr. Glaspie
4 was housed, where Mr. Brown was housed. And the
5 reason for that was to see if they would have any
6 contact with each other on any kind of a routine
7 basis where they could discuss this matter.

8 Q. And did you find out that they were
9 housed -- and I'm talking about Weiner and Glaspie
10 were housed in an area, the same pod, for a period
11 of time?

12 A. Yes.

13 Q. What else did you do after that?

14 A. Well, after that, we went to -- I checked
15 on the computer on JIMS and found that Weiner was
16 scheduled to appear on his case in the 228th
17 District Court on December 1st. And I advised you
18 of it.

19 We went up to talk to his attorney
20 about it, which was Joe Bailey. At that
21 particular moment in time we were not able to talk
22 to Mr. Weiner.

23 Q. We didn't get a whole lot of
24 details of anything as to what
25 Mr. Weiner was going to say one way or

1 the other at that point from his
2 attorney, did we?

3 A. Correct, we did not.

4 Q. Did we also make -- have an agreement
5 with him -- and I'm talking about Joe Bailey -- to
6 get with us after he had a chance to speak with
7 his client in private?

8 A. Yes, sir. He said he would talk to his
9 client and see if he could get his client to talk
10 to us.

11 Q. What else did you do then?

12 A. Well, we also found out that Paul Purcell
13 was scheduled to be in court on the 8th of
14 December in the 232nd -- in the 232nd District
15 Court. And we found out his attorney's name and
16 we were going to contact his attorney to get
17 permission to talk with him.

18 Q. Now, did you also receive -- in terms of
19 another investigation concerning post-conviction
20 information, did you also get some other
21 information about something else, some other
22 informants in another jail?

23 A. Yes, I did.

24 Q. And what was that?

25 A. I received information that there were

1 two other inmates in the Federal detention
2 facility downtown here on Texas who might have
3 information regarding this case.

4 Q. Okay. And did you talk to other family
5 members of these two additional informants in
6 Federal custody concerning what information they
7 may have had?

8 A. Yes, I did. The first -- one of the two
9 defendants was named Kevin Brown. I talked to his
10 mother, Pamela Brownstone, who advised me that he
11 was in jail there at the Federal detention
12 facility downtown on a narcotics case. He was due
13 to be sentenced. And allegedly he had some
14 information that might be of interest to us in
15 this case.

16 Q. And who else did you speak with?

17 A. Well, later that same day we also got a
18 phone call from a Federal inmate by the name of
19 Stevie, S-T-E-V-I-E, Joe Sherman, from his
20 girlfriend -- well, from him. And he said to call
21 his girlfriend because she could receive calls and
22 get messages to him, that he had information as
23 well on this case.

24 Q. Now, for purposes of the record what is
25 Kevin Brown's Department of Correction number?

1 A. You mean his Federal number?

2 Q. Yes.

3 A. Federal number is 24602-179.

4 Q. And Stevie Sherman, what is his?

5 A. His Federal I.D. number is 15932-179.

6 Q. Did you make any arrangements then to at
7 some point in the future speak with both of these
8 other informants?

9 A. Yes, we did. I advised you who their
10 attorneys were and you contacted their attorneys
11 to get permission for us to interview these two
12 individuals in the Federal detention facility.
13 You had them on the phone. I talked to each one
14 of them individually. And they did advise us that
15 it was okay for us to talk to them.

16 Q. And they also said they didn't have to be
17 present?

18 A. That's correct.

19 Q. Now, these two guys that were giving
20 information, were they trying to get help on the
21 pending Federal cases that they had?

22 A. Yes, one of them was scheduled to do 14
23 and a half years. That would be Mr. Sherman. He
24 was on an access device fraud and he was looking
25 for some help. And they made it very plain that

1 that's what they were looking for was some help on
2 their case.

3 And Kevin Brown was scheduled to get
4 four years, ten months, but he also had 30 years
5 out of -- I believe it's Jackson County. And I
6 think he was looking -- from what I could
7 gather -- for more help on that case than he was
8 his Federal case.

9 Q. Now, you did a lot of background
10 investigation before you went and talked with
11 these people, did you not?

12 A. Yes, sir.

13 Q. Including calling the D.A.'s in different
14 counties?

15 A. Right.

16 Q. I don't need you to go into everything
17 you did, but generally what was the next step that
18 you took in terms of your investigation?

19 A. At that point in time I contacted the
20 Federal detention facility and set up appointments
21 for us to go see -- for you, Mr. Rizzo, and myself
22 to go see Stevie Sherman and Kevin Brown.

23 Q. Did you also find -- did you -- before
24 you went and met with them, did you have an idea
25 from talking to their family members the gist of

1 what they were going to say?

2 A. Yes. Tiffany Sanders, who is, I believe,
3 the girlfriend of Stevie Sherman, and I talked. I
4 advised her that we needed to know what kind of
5 information he had to offer so we could be
6 prepared when we talked to him and who his
7 attorney was. She called him evidently or he
8 called her and we found out that his attorney was
9 out of Dallas. His name was Franklyn Mickelsen.

10 And we also found that the person
11 who had been spreading these stories over there at
12 the Federal detention facility was a person by the
13 name of Deontra Smith. And that's all the
14 information she had on him.

15 Q. Okay. But what was the story that you
16 were hearing?

17 A. Well, the story we were hearing was that
18 a person -- before we found out the name -- a
19 person over there was saying that he had, in fact,
20 been the person who was supposed to be on that
21 deal and --

22 Q. What are you talking about "on that
23 deal"?

24 A. Well, he was -- he was involved -- I'm
25 getting confused here. There's a lot of

1 information and it all kind of starts running
2 together after a while.

3 Deontra Smith was supposedly
4 involved in the ACE check cashing robbery and
5 capital murders and that allegedly Mr. Brown was
6 not even there. It was him that was there and did
7 those murders with Glaspie.

8 Q. So Deontra Smith, according to the
9 information that you had before you went and
10 talked with them, Deontra Smith was making
11 statements in the Federal Detention Center that he
12 was the person who was involved in the robbery
13 where Ms. Jones and Officer Clark were killed and
14 it was not Alfred Brown?

15 A. That's correct.

16 Q. Okay. Did you also -- did we also go
17 talk with Glaspie to interview him about
18 Mr. Weiner?

19 A. Yes, sir.

20 Q. And did he also deny making those
21 statements?

22 A. He did deny them, yes.

23 Q. Okay. Let me also ask you, did you check
24 to see what Deontra Smith had been in custody for
25 before we went and talked with him, too?

1 A. Yes. He had been arrested in Dallas,
2 Texas, for aggravated assault with a deadly weapon
3 in two cases, January 2003. He was in that jail
4 until March 28th of 2003. That's after he made
5 bond.

6 Q. Okay. Let me direct you to December 6th
7 of 2005, and ask if you had an occasion to meet
8 with Stevie Joe Sherman and Kevin Darnell Brown?

9 A. Yes, we did.

10 Q. What did Stevie Joe Sherman say
11 concerning his conversation with Deontra Smith
12 generally?

13 A. Generally speaking that Deontra Smith was
14 part of the crew involving Dashan Glaspie and, I
15 assume, Elijah Joubert, alias Ghetto. And that he
16 had done a lot of licks, which in layman's terms
17 is he had done a lot of robberies with those guys
18 in the past.

19 Q. Okay. Did Stevie Joe Sherman tell you
20 and myself that sometime after the trial of Alfred
21 Brown, somewhere around the 1st of November, that
22 this Deontra Smith told him -- that would be
23 Stevie Joe Sherman -- that, quote, "That guy took
24 my place. I was the one who killed the officer"?

25 A. Yes.

1 Q. And then when you met with Kevin Darnell
2 Brown, did he make any statements concerning what
3 Deontra Smith said similar to what Stevie Joe
4 Sherman claimed?

5 A. Yes, sir. He said that they had hit --
6 that Deontra Smith had told them they had hit a
7 bunch of licks. And he also stated that that guy,
8 meaning Alfred Brown, took his place. It was
9 supposed to be me.

10 Q. Okay. He claimed that Deontra Smith also
11 admitted it to him that he had killed the officer,
12 not Alfred Brown?

13 A. Correct.

14 Q. Did he also make a statement -- and I'm
15 talking about Kevin Darnell Brown. Did he make a
16 statement claiming that Deontra Smith said, quote,
17 "The bitch was killed so we had to finish it off"?

18 A. Yes, sir.

19 Q. Is that statement that was allegedly made
20 by Deontra Smith to Kevin Darnell Brown, was that
21 statement, "The bitch was killed so we had to
22 finish it off," was that consistent with the
23 evidence, both physical and testimonial evidence,
24 that was presented during the trial?

25 A. No, sir.

1 Q. And why is that?

2 A. Well, the evidence presented at trial was
3 that the officer was killed first outside the
4 building and then the clerk, Mrs. Jones, was then
5 killed and then the defendants made their escape.

6 Q. The statement that Deontra Smith, if he
7 made that, to his -- to Kevin Darnell Brown, was
8 not consistent with the facts as you know it from
9 the investigation of this capital murder over at
10 the ACE check cashing store?

11 A. That's correct.

12 Q. After concluding the interview with both
13 of those inmates, did you also then go back and
14 speak with Dashan Glaspie concerning his knowledge
15 of Deontra Smith?

16 A. Yes, sir.

17 Q. And did he -- while he was interviewed,
18 did he give similar or the same answers as he gave
19 here in court to you?

20 A. Yes, sir.

21 Q. In other words, that he was -- this
22 Deontra Smith was not part of this crew, that they
23 hung out, they were friends, that he was never --
24 I'm talking about Deontra Smith -- was not present
25 during the offense and that he was -- Deontra

1 Smith was not a co-conspirator in any way with the
2 check cashing aggravated robbery and killings?

3 A. That's correct.

4 Q. Now, did you also then -- after we left
5 Glaspie, did we happen to run into Joe Bailey at
6 the County Jail?

7 A. Yes, sir. Actually we ran into Joe
8 Bailey as we were going into the jail to see
9 Glaspie and we talked to him before we went
10 upstairs.

11 Q. Okay. And did we tell him that we wanted
12 to see Brian Weiner?

13 A. Yes, sir.

14 Q. After we spoke with Glaspie, did we then
15 go with Joe Bailey, the attorney for Weiner, to go
16 speak with Weiner?

17 A. Yes, sir.

18 Q. And did we question him as to the
19 statements that are the subject of this Motion for
20 New Trial that were allegedly made by him?

21 A. Yes.

22 Q. Did he tell us essentially the same
23 things concerning whether Glaspie made that
24 statement to him admitting that he was the one who
25 shot the officer?

1 A. Yes, sir. His statements were
2 consistent.

3 Q. In other words, he denied that Glaspie
4 ever said that, No. 1?

5 A. Correct.

6 Q. And did he also deny that he told anybody
7 else that Glaspie said it?

8 A. Correct.

9 Q. And did he also tell us that Brown, this
10 Defendant, offered to pay him money or whatever he
11 wanted if he would say that Glaspie did it?

12 A. Yes, sir.

13 Q. On December 12th of 2005, did we have an
14 occasion to meet with Deontra Smith over at the
15 Federal Detention Center?

16 A. Yes, sir, we did.

17 Q. Did you give him his Miranda warnings
18 from the Blue Card at 1:42 p.m.?

19 A. Yes, sir, I did.

20 Q. Did you -- while interviewing him, did
21 you ask him if he was involved in the shooting of
22 Officer Clark?

23 A. Yes, sir. That was the first question we
24 asked him.

25 Q. And did he deny it?

1 A. His answer was no.

2 Q. Did he also deny ever making the
3 statements to any other inmates saying that he was
4 part of the robbery where the officer and
5 Mrs. Jones were killed?

6 A. I'm sorry --

7 Q. In other words, he denied -- you
8 testified already that he denied being part of the
9 robbery?

10 A. Correct.

11 Q. Did he also deny making the statements to
12 the inmates in there about being part of the
13 robbery?

14 A. Yes, sir, he denied that.

15 Q. He denied everything?

16 A. Yes, sir.

17 Q. Did he make the statement, "I didn't
18 shoot Officer Clark. How could I do it when I
19 wasn't even there"?

20 A. Yes, sir, he made that statement.

21 Q. Did you form an opinion as to whether or
22 not you believed that he had, in fact, made those
23 statements to other inmates, though?

24 A. My opinion would probably be that he
25 probably made statements like that, but it was not

1 that they were accurate. He was just trying to
2 puff himself up, what we call a puffer. He was
3 puffing and throwing out information. Most of the
4 information that he could get or that he got was
5 information that came through the news media and
6 the papers.

7 Q. To make himself look bigger before he
8 went to the pen?

9 A. Right.

10 Q. And he was actually getting ready to go
11 to the pen?

12 A. He was.

13 Q. Federal pen?

14 A. Yes.

15 Q. And did you also then allow or have a
16 member of the D.A.'s Office allow Mr. Hinton, the
17 Defense attorney in this case, to review all the
18 information that you generally spoke of here
19 today?

20 A. Yes, sir.

21 Q. And that was sometime before Christmas?

22 A. Yes, sir. I believe it was Friday
23 morning, the 16th, if I remember correctly.

24 MR. RIZZO: Is that right,

25 Mr. Hinton or --

1 MR. HINTON: I initialed the
2 investigative report that I had read it. So
3 whatever date that was.

4 A. Yes. I believe it was the 16th. It was
5 a Friday morning he came by.

6 Q. (By Mr. Rizzo) And you obviously did
7 additional things in your investigation that you
8 have not testified to in terms of checking out
9 these two particular but similar investigations
10 that occurred post-conviction of Mr. Brown?

11 A. Yes, sir.

12 MR. RIZZO: I'll pass the witness,
13 Your Honor.

14 THE COURT: Any questions.

15 MR. HINTON: No questions, Judge.

16 THE COURT: You may step down, sir.
17 Anything else from the State.

18 MR. RIZZO: No, Your Honor.

19 THE COURT: Anything else from the
20 Defense.

21 MR. HINTON: No, Your Honor.

22 THE COURT: The Motion for New Trial
23 is denied.

24 (Proceedings concluded.)
25

1 THE STATE OF TEXAS :

2 COUNTY OF HARRIS :

3

4 I, TONI GOUBEAUD, Official Court
5 Reporter in and for the 351st District Court of
6 Harris County, Texas, do hereby certify that the
7 above and foregoing contains a true and correct
8 transcription of all portions of evidence and
9 other proceedings requested in writing by counsel
10 for the parties to be included in this volume of
11 the Reporter's Record, in the above-styled and
12 numbered cause, all of which occurred in open
13 Court or in Chambers and were reported by me.

9

10 I further certify that this
11 Reporter's Record of the proceedings truly and
12 correctly reflects the exhibits, if any, admitted
13 by the respective parties.

12

13 I further certify that the total
14 cost for the preparation of this Reporter's Record
15 is \$_____ and was paid or will be paid by
16 _____.

15

16 WITNESS MY OFFICIAL HAND on this the
17 18th day of September, 2017.

16

17

18 /S/ Toni Goubeaud
19 TONI GOUBEAUD, CSR No. 5774
20 Expiration Date: 12-31-17
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22 351st District Court
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